THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.4055 of 1998

Dated: 06.06.2007

Between:

The Depot Manager,
APSRTC, Kamareddy Depot,
Nizambad.

... Petitioner

AND

K.Gangadhar, E.301658,
Ex-conductor

... Respondent

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.4055 of 1998

ORDER:-

This writ petition is filed by the Depot Manager, Kamareddy Depot of Andhra Pradesh State Road Transport Corporation against the award of the Labour Court-II, Hyderabad in I.D.No.11 of 1994 dated 21.9.1996 whereby it modified the punishment of removal from service imposed on the respondent to that of reinstatement with all attendant benefits but with 25% back-wages.

The respondent who is a conductor was conducting bus on 9.4.1993 on route Santaipet to Kamareddy and when the bus reached stage No.3/2, a check was conducted by the officials of the Corporation. Following the same three charges were framed which read as under:

> " 1. For having failed to collect the fare and issue tickets to a batch of 11 passengers found traveling without tickets, who boarded your bus at Naniwada and bound for Lingapur, ex-stages 5/4 to 2, which constitutes misconduct under Reg.28(vi) (a) of APSRTC Employees (Conduct) Reg.1963.
>
> 2. For having violated the rule issue and start"which constitutes misconduct under Reg.No.28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.
>
> 3. For having closed the ticket tray numbers of all denominations upto stage No.3 without completing the above ticket issues, which constitutes misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct)

Reg.1963."

Enquiry was conducted into the charges and thereafter the respondent was removed from service by the petitioner vide order dated 14.10.1993 and appeal filed by the respondent to the appellate authority was rejected on 3.5.1994. Thereafter, the respondent moved the Labour Court by way of I.D.No.11 of 1994. The Labour Court by the award impugned in the writ petition modified the punishment as mentioned hereinabove.

Heard Sri V.S.K.Rama Rao, learned counsel appearing for the petitioner and Sri V.Narsimha Goud, learned counsel for the respondent.

Sri V.S.K.Rama Rao submitted that the Labour Court having not reversed the finding of the disciplinary authority and the appellate authority that the respondent is guilty of misconduct ought not to have interfered with the punishment imposed on the respondent. He further submitted that in any event award of 25% of back-wages is wholly unreasonable.

Sri V.Narsimha Goud learned counsel for the respondent submitted that even assuming that all the three charges are held proved, the punishment imposed on the respondent is wholly disproportionate to the gravity of the charges framed against him.

It is no doubt true that the Labour Court has not reversed the finding of the domestic tribunal and the appellate authority as regards the guilt of the respondent. However, it has exercised its discretion vested in it by Section 11-A of the Industrial Disputes Act 1947 (for short "the Act") having felt that the punishment of removal from service is too disproportionate to the gravity of charges. It is well settled legal proposition that ordinarily Courts/Tribunals shall not interfere with the

quantum of punishment imposed by the domestic tribunal in exercise of powers vested under Section 11-A of the Act unless the punishment shocks the judicial conscious of the Courts or Tribunals. (See **Om Kumar vs Union of India**[1], **Union of India and Another vs G.Ganayutham**[2], **Divisional Controller, K.S.R.T.C. (N.W.K.R.T.C.) vs A.T.Mane**[3], **V.Ramana vs APSRTC**[4] and **Ram Saran vs I.G.of Police, CRPF AND ANOTHER**[5])

However, I find some force in the contention of the learned counsel for the respondent that none of the three charges framed against the respondent pertain to his dishonest intention to misappropriate the money of the Corporation or to make wrongful gain. The fact remains that, as charge No.1 itself shows, he failed to collect fare and issue tickets to a batch of 11 passengers. Even with regard to charge No.3 it is not to the effect that closure of ticket tray of all denominations up to stage No.3 is with a dishonest intention of collecting fares subsequently and to misappropriate the money. I am therefore of the considered opinion that the charges framed against the respondent, at the most show lethargy and lack of proper diligence on the part of the respondent and they do not impute the respondent with dishonesty. In my considered view the Labour Court in directing the re-instatement of the respondent has not misused the discretion vested in it under Section 11-A of the Act.

However, with regard to back-wages since the respondent was held guilty of all the three charges which if not anything else, would point to his negligence in conducting of the bus, I am of the considered opinion that he is not entitled to back-wages. However, it is brought to my notice that this Court has already directed deposit of half of the back-wages within eight weeks by order dated 21.8.1998 and the time

granted on 21.8.1998 was extended upto 22.10.1998 by order dated 6.11.1998.

Though the learned counsel for the respondent does not have specific instructions on the withdrawal of part of the back-wages deposited by the petitioner, he states that in all probability his client would have withdrawn the same. He also fairly submits that the award to the extent of back-wages may be set aside, but the petitioner may not be permitted to recover the back-wages which were already withdrawn by the respondent.

Having regard to the facts and circumstances of the case, I deem it appropriate to modify the award of the Labour Court to the following effect:

1. that the award to the extent it directed reinstatement of respondent with continuity of service with all attendant benefits is confirmed.
2. the award to the extent of the back-wages is set aside. However, if the respondent has withdrawn any portion of the back-wages the petitioner shall not recover the same from the respondent.

The writ petition is accordingly disposed of. No costs.

C.V.NAGARJUNA REDDY,J

Dt :06.06.2007
Mdaa.

[1] (1995) 6 SCC 749

[2] (1997) 7 SCC 463

[3] (2005) 3 SCC 254

[4] (2005)7 SCC 338

[5] (2006) 2 SCC 541